IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 161 OF 2005

Sai Mudra Finance Pvt. Ltd.,
through its Recovery Officer
Shri Dilip N. Shirodkar. ... Applicant

versus

Shri Rafik Raja Khalifa. ... Respondent

Mr. N. K. Sawaikar, Advocate for the Applicant.

Mr. S. D. Padiyar, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 5TH OCTOBER, 2005.

P.C.:-

This application for leave to appeal is filed by the complainant in C.C. No. 368/OA/2004/C against the Order dated 7-6-2005 acquitting the accused under Section 138 of the Negotiable Instruments Act, 1881.

There is no dispute that the respondent/accused had taken a loan from the complainant-Company in the sum of Rs.25,000/- on or about 21-3-2001. The accused gave a cheque

for a sum of Rs.39,700/- dated 26-5-2004 and the said cheque when deposited on behalf of the complainant was returned dishonoured for want of sufficient funds whereupon on behalf of the complainant a legal notice was issued to the accused demanding the amount to be paid within 15 days which the accused failed to comply or reply. The complaint did not show that the accused had made any payment from the time the accused had taken the loan on 21-3-2001 till the demand was made by notice dated 7-6-2004.

The learned J.M.F.C., Ponda, has rightly observed that the complainant had failed to prove by producing any material that there was any payment made by the accused inbetween or any acknowledgement given by the accused in writing which had extended the period of limitation.

In the case at hand, the cheque was given after the debt was barred by limitation and the so-called acknowledgement dated 31-3-2005 which is alleged to have been given in writing was given by the accused after the period of limitation had expired.

In the light of that, this is not a fit case to grant leave to appeal. Application rejected.

N. A. BRITTO, J.

RD.